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Exam No. _____

**502-002 Contracts
Fall 2009**

**UNM School of Law
Final Examination
Three Credits**

**Professor J. Moore
M: Dec. 14, 2009
1:30-4:00 p.m. (2½ hrs.)**

Examination Format: Essay Answers

Professor's Instructions

1. Students may bring into the exam course outlines that they have prepared or participated in preparing, as well as the 1-page handout entitled "Contracts – A Bird's Eye View." Other materials, notes and texts are not allowed.
2. This is a two and a half-hour exam. It includes **one consolidated fact pattern**, followed by **two essay questions, each of which has additional facts relating to that question alone**. The two questions are of equal weight and can be answered effectively in one hour each. **The exam is designed for you to spend a total of 30 minutes reading and outlining your answers before beginning to write**. Your answers will be better reasoned if you take advantage of this preparation time.
3. Please start by reading the consolidated fact pattern twice, and then proceed to Question #1. Read the specific facts and the Call of Question #1 twice as well. I strongly encourage you to outline your answer to Question #1 before beginning to write or type your answer. After completing Question #1, read the specific facts and the Call of Question #2. Again, I advise you to outline that answer before you begin to write or type your answer.
4. Please remember that your exam will be evaluated for the precision, thoroughness and organization of your answers. The conclusions you reach are less important than the strength of your analysis.
5. It has been a privilege to work with each of you. **ALL THE BEST ON THIS EXAM AND HAPPY HOLIDAYS!**

Essay Answers

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

Laptop for typing:

1. Log off all programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "**Prepare to start new exam**" is marked and click, "**Next.**"
5. Enter your "**Exam ID**" number and confirm it.
6. Click the drop box next to "**Course**" and select your course and professor and confirm. Click, "**Next**".
7. Optional choices screen: If you choose to change these options please do so. If not, click "**Next**".
8. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked "**Got it**" and click, "**Next**".
9. Type "**Closed**" for exam mode, check the box below that to confirm and click, "**Next**".
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "**Begin Exam.**"
12. A "**Security Check**" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. When beginning the exam, **TYPE THE NAME OF THE SUBJECT AND THE PROFESSOR'S NAME AT THE TOP OF THE PAGE** and proceed with your answer.

ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write them on the exam and do not sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Proctor or the Registrar's Office (William or Ernest) at 277-2146/2147 or jackson@law.unm.edu or tafoya@law.unm.edu

You may not make/keep a copy of this exam! You are required to return this exam with your answer.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, **STOP** immediately.

Bluebook (Writers): *At this point immediately stop writing, close all blue books, and gather up any materials. If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.*

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically** and follow either the Mac or Windows user directions below:

Mac users only:

- Wait for the airport icon to indicate you have reconnected to the wireless network.
 - If the “Check Network Connection” screen displays, select OK.
 - Use your Airport to reconnect to Lobo-Sec.
 - Reauthenticate using your browser.
- Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- Exit the exam by selecting **Exam4 Save Options, Exit**.
- If the exam **did not submit electronically**, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
 - If the exam still did not submit electronically, contact an IT proctor

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Windows users only:

- If the Status” window indicates a problem with submitting electronically (usually Error 12: No response), close the window with the Red X and select File and Save Options. Select Exit (don’t worry...the completed exam is saved to your hard drive). Check Network Connection” screen displays, select OK.
 - Exit the exam by selecting **File and Save Options, Exit**.
 - Reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.

- Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- If the exam still did not submit electronically, contact an IT proctor.

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

[Exam begins on the next page]

CONSOLIDATED FACTS – for Questions #1 and #2 (*please read twice carefully*):

Allie Gore is an environmental economist on the faculty at UNM. She is writing a book on the potential impact of global warming and rising sea levels on poverty in island nations throughout the world. In the past, Prof. Gore has published three economics books with High Desert Press, based in Santa Fe. Book sales for each book averaged \$200,000/year in revenues for High Desert Press over a five-year period, from which Allie earned royalties at the rate of 10% of total sales.

For her new manuscript, Allie approaches Coastal Academic Booksellers, a new publishing house in Albuquerque. Coastal's Editor-in-Chief Moby Dickens is thrilled at the prospect of working with her.

In January of 2009, Moby and Allie meet to discuss her book project, her past experiences publishing with High Desert Press, and a potential agreement between Allie and Coastal. During their meeting, Moby tells Allie he will be able to offer her an advance of between \$25,000 and \$30,000, and 15% royalties on any book sales. They consider a deadline of August 1 of the same year, although Moby reassures Allie that "these deadlines get postponed all the time." They also discuss potential countries to serve as the case studies in Allie's book, including Indonesia, the Comoros Islands and Haiti. Moby emphasizes to Allie that she has flexibility with regard to the final designation of the specific countries on which her book will focus. Moby suggests that they meet again to finalize their negotiations.

By the end of their meeting, Allie is anxious to wrap up the deal immediately. She tells Moby that she could accept a \$25,000 advance. She shakes hands with Moby and declares, "It would be my pleasure to publish my global warming book with Coastal."

The next day, Moby draws up a contract that specifies the subject of the book, the approximate length (350 pp.), the 15% royalty rate, the \$25,000 advance, and the submission deadline of August 1, 2009. Moby signs the contract and delivers it to Allie, who leaves it on her desk, but puts off signing it for the moment.

By February, Allie is hard at work on her manuscript, and has received her \$25,000 advance. By April she has completed the first three of ten planned chapters. Moby has received and read the chapters and thinks that they are very well written.

That summer, Moby spends \$15,000 on marketing arrangements for the forthcoming book. Coastal's customary budget for marketing its publications is \$5000, but Moby decides to spare no expense in light of the opportunity to work with a well-known author like Prof. Gore. Moby also makes an \$18,000 nonrefundable payment to the printers.

FACTS FOR QUESTION #1 ONLY (read twice):

In July Allie comes down with full-blown writer's block. After the August 1 deadline has come and gone, she notifies Moby that she has no intention of completing the manuscript. Instead, she signs a contract with High Desert Press to write an exposé of the publishing industry, focusing on her interactions with Coastal Academic Booksellers. Instead of royalties, High Desert pays Allie a \$40,000 advance, with an additional \$60,000 payment contemplated upon her submission of the manuscript.

In September, Moby calls Allie to determine if he might convince her to complete her manuscript. Allie firmly declines, and informs Moby of the topic of her new book project with High Desert. Moby is shocked and protests, "Allie, you left Coastal high and dry, and now you're profiting at our expense."

"But Moby," Allie retorts, "we never reached a binding agreement. You need to learn to go with the flow. I myself like to take the high road, and that's why I'm going with High Desert."

CALL OF QUESTION #1:

Moby flows down to your law office, and asks you if there are any causes of action he can bring against Allie. Fully analyze all the claims that Moby might bring and the relevant elements of each claim. Consider Allie's counterarguments, as well as Moby's potential remedies under each cause of action.

QUESTION #2:

Assume the *consolidated* facts set forth in the fact pattern above (the first seven paragraphs prior to July, 2009), with the following change:

CHANGE: Rather than August 1, 2009, the deadline mentioned by Allie and Moby and included in the written contracts is August 1, 2010. (Otherwise, the written contract is as described above.)

FACTS FOR QUESTION #2 ONLY (please review carefully, twice):

In July 2009, Allie realizes that she has not made much progress on her manuscript since April, so she calls Moby to commiserate. “Moby,” she blurts out, “I’ve lost my momentum. I don’t want to disappoint you, but I’m very worried about my ability to complete the manuscript.” “I’m sorry to hear that, Allie,” responds Moby curtly. “Oops, I’ve got another call,” he interjects before hanging up. Moby hears nothing from Allie for months.

In October, Coastal Academic Booksellers is approached by UNM Professor Dee Nier, who proposes to write a book entitled *Exposing the Myth of Climate Change*. In light of Allie’s “loss of momentum” on her book project, Moby decides to share Allie’s preliminary chapters with Dee, to give her a deeper understanding of the opposing viewpoint. Market research shows that the book should be a good seller in 2010, earning at least \$300,000/year in revenues. Moby signs a book contract with Prof. Nier on December 1.

On December 2, Allie calls Moby. “Moby,” she exclaims triumphantly, “I’m back on track. I’ve written three more chapters. I just know I can finish the manuscript by next August.” “It’s too late, Allie,” declares Moby. “I’ve cancelled our contract. You said you couldn’t finish the job. Besides, climate change is out of fashion. And by the way,” Moby adds, “Prof. Nier enjoyed reading your drafts. Without meaning to, you helped her identify flaws in global warming theory.”

CALL OF QUESTION #2:

Allie takes the high road up to your office, and asks you to represent her in an action against Moby. Assume for this question that Allie and Moby reached an oral agreement (you do *not* need to analyze offer, acceptance and consideration for purposes of this question). Fully analyze all other aspects of any potential claims, including possible remedies. Don’t forget to look back at the consolidated facts, to evaluate any relevant revenue/expenditure figures from Allie’s perspective. Also consider any counterarguments or claims that Moby might present.